

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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E. O. 11652: N/A

TAGS: ETRD, PH

SUBJECT: COTTON CONTRACT PROBLEM

REF: MANILA 564

FOLLOWING IS TEXT OF BLAIR - FRIEDMAN TELEX REPLY TO
DBP COMMUNICATION CONTAINED REFTEL:

BEGIN QUOTE HONORABLE JOSE V. DE OCAMPO, VICE CHAIRMAN,
DEVELOPMENT BANK OF THE PHILIPPINES.

THANK YOU FOR YOUR INFORMATIVE CABLE OF JANUARY 7. WE
HAVE HAD THE OPPORTUNITY TO REVIEW ITS CONTENTS WITH THE
SHIPPERS INVOLVED AND WISH TO COMMENT AS FOLLOWS:

1. LIRAG: ALLENBERG AND LAWRENCE DISAGREE SHARPLY WITH
LIRAG'S CONTENTION THAT THERE ARE ANY SIGNIFICANT QUALITY
PROBLEMS WITH PRIOR SHIPMENTS. WE CONTINUE TO URGE THAT
LIRAG PROMPTLY SUBMIT ANY SUCH CLAIMS TO OSAKA ARBITRATION
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IN ACCORDANCE WITH THE CONTRACTS. ALLENBERG AND LAWRENCE

'ILL, OF COURSE, HONOR ANY ARBITRATION AWARDS RENDERED BY OSAKA. IN THE MEANTIME, PENDING ARBITRATION OF THESE DIFFERENCES, WE SEE NO REASON WHY THE LETTERS OF CREDIT ON THE REMAINING CONTRACTS WITH THESE SHIPPERS SHOULD NOT BE OPENED UP PROMPTLY.

HOWEVER, IN ORDER TO EXPEDITE THE OPENING OF LETTERS OF CREDIT BY LIRAG ON ITS REMAINING CONTRACTS WITH OTHER SHIPPERS, ALL SHIPPERS, INCLUDING ALLENBERG AND LAWRENCE, HAVE AGREED THAT LIRAG SHOULD OPEN UP LETTERS OF CREDIT ON REMAINING ANNEX SALES IN ANY, REPEAT, ANY ORDER. WE WOULD APPRECIATE CONFIRMATION, THEREFORE, THAT LIRAG WILL PROMPTLY OPEN LETTERS OF CREDIT FOR THE OUTSTANDING PAN AMERICAN, HOHENBERG AND STAPLE SALES.

WE WOULD ALSO APPRECIATE YOUR CONFIRMATION THAT LIRAG WILL OPEN LETTERS OF CREDIT FOR ALLENBERG AND LAWRENCE SALES UPON THE FIRM COMMITMENT BY THOSE SHIPPERS TO HONOR ALL ARBITRATION AWARDS ON PENDING CLAIMS.

2. UNITED ASIA: WE CANNOT UNDERSTAND CONTINUED DELAY IN OPENING OF LETTER OF CREDIT FOR PAN AMERICAN. WE RECOGNIZE THAT ON OR ABOUT MAY 10 THE MILL SUFFERED SOME DAMAGE BY REASON OF A FIRE. NEVERTHELESS (1) ON JUNE 19, SOME FIVE WEEKS AFTER THE FIRE, THE MILL APPLIED TO COMMODITY CREDIT CORPORATION FOR FUNDS TO COVER THIS CONTRACT; AND (2) ALSO DURING JUNE, PAN AMERICAN RECEIVED REPEATED ASSURANCES FROM THE DBP THAT UNITED ASIA WOULD OPEN THE LETTER OF CREDIT. CAN YOU PLEASE ADVISE, THEREFORE, WHAT HAS TRANSPRIRED SUBSEQUENTLY AND PRECISELY WHEN PAN AMERICAN CAN EXPECT THE L/C TO BE OPENED.

3. YUPANGCO: WE ARE ADVISED THAT, AT LONG LAST, AN OPERATIVE L/C HAS BEEN OPENED ON THE FIRST 500 B/C OF THE CONTRACTS WITH CIE, LEAVING SOME 7,000 B/C REMAINING. AS YOU ARE AWARE, YUPANGCO HAS OFFERED A VARIETY OF EXCUSES OVER THE PAST MONTHS IN ORDER TO ATTEMPT TO AVOID ITS OBLIGATIONS UNDER THESE CONTRACTS, THE LATEST ONE APPARENTLY BEING ALLEGED FEARS REGARDING THE QUALITY OF THE PENDING SHIPMENT.

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CIE IS FORWARDING TO YOU AND YUPANGCO CERTIFICATES OF GENERAL SUPERINTENDENCE CO. (COTTON) INC. DEMONSTRATING THAT THE SHIPMENT FULLY COMPLIES WITH THE CONTRACT. THE RELEVANT PORTIONS OF THE CERTIFICATIONS READ:

CERTIFICATE OF SAMPLING JANUARY 2, 1976 WE CERTIFY THAT WE HAVE EXAMINED 493 BALES MARKED CZUV FOR APPROVAL

AGAINST TYPE VARO 1-1/16 STAPLER, MICRONAIRE 3.8 AND HIGHER
PRESSLEY 80,000, AND COTTON PASSED CONTRACTUAL SPECIFICATIONS.
SELLERS: COTTON IMPORT AND EXPORT COMPANY, DALLAS,
TEXAS BUYERS: YUPANGCO COTTON MILLS, INC., MANILA,
PHILIPPINES ANGONO, ANTIPOLO, RIZAL

CERTIFICATE OF WEIGHING JANUARY 13, 1976

WE CERTIFY THAT 493 BALES MARKED ZCUV AND LISTED BELOW
WERE WEIGHED IN ACCORDANCE WITH USUAL USDA PROCEDURES AND
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ARE TRUE AND CORRECT.

BALES	MARK
493	ZCUV

GROSS WEIGHT	259,847 LBS.
TARO	10,455 LBS.
NET 'EIGHT	249,392 LBS.

WE SEE NO REASON WHY, UPON RECEIPT OF THESE CERTIFICATES,
YUPANGCO SHOULD NOT IMMEDIATELY OPEN L/CSFOR THE BALANCE
OF THESE CONTRACTS. WE BELIEVE THAT THE DELAYS TO DATE
HAVE BEEN MOST UNREASONABLE.

4. CENTRAL TEXTILES: WE NOTE THAT YOU HAVE NOT INCLUDED
IN YOUR LIST OF OUTSTANDING CONTRACT THE 412 B/C ON
ALLENBERG'S SALE NO. 3712. WE CANNOT UNDERSTAND THIS
OMISSION. WE ARE AWARE THAT CENTRAL CLAIMS THAT THIS
CONTRACT WAS TERMINATED BY ALLENBERG'S FAILURE TO SHIP
THE COTTON TIMELY IN 1974. WE DISAGREE WITH CENTRAL'S
VERSION OF THE FACTS RELATING TO DELAYS IN SHIPMENT AT
THAT TIME, BUT DO NOT WISH TO ENGAGE IN THAT ARGUMENT
HERE. HOWEVER, WE DO WISH TO POINT OUT TWO FACTS WHICH,
IN OUR VIEW, ARE CRITICAL:

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---- (1) THIS SALE WAS INCLUDED ON THE ANNEX TO THE
LETTER OF ASSURANCES WHICH SPECIFICALLY PROVIDED THAT
"NO FURTHER CHANGES IN THIS ANNEX WILL BE MADE"; AND

---- (2) IN EARLY JULY, 1975, CENTRAL OPENED A LETTER
OF CREDIT FOR A PORTION (300 B/C) OF THIS SALE.

IN VIEW OF THE INCLUSION OF THIS SALE ON THE ANNEX AND
CENTRAL'S RECOGNITION OF THE CONTRACT IN JULY, 1975, WE
FIND IT IMPOSSIBLE TO SEE ANY JUSTIFICATION FOR CENTRAL'S
POSITION THAT THE CONTRACT WAS SOMEHOW TERMINATED IN 1974.

5. SOLID MILLS/STARKE TAYLOR: WE HAVE CAREFULLY REVIEWED
THE CIRCUMSTANCES SURROUNDING THIS MATTER. IT IS CLEAR

TO US THAT STARKE TAYLOR CONTINUALLY AND REPEATEDLY OVER A PERIOD OF MONTHS GAVE SOLID THE OPPORTUNITY TO OPEN UP APPROPRIATE LETTERS OF CREDIT EVEN LONG AFTER SOLID MILLS AS IN DEFAULT. ONLY AFTER SOLID MILLS REPEATEDLY IGNORED THESE OPPORTUNITIES DID STARKE TAYLOR CANCEL THE CONTRACT IN ACCORDANCE WITH PREVIOUS ADVICE TO SOLID. WE BELIEVE THAT A FURTHER REVIEW OF THE FILE WILL DEMONSTRATE THAT THIS ANALYSIS IS CORRECT.

MORE IMPORTANTLY, WE FEEL COMPELLED TO TAKE ISSUE WITH

"

THE CONTENTION THAT THIS DISPUTE IN ANY WAY SHOULD AFFECT THE OBLIGATION OF ANY OTHER MILLS. AS YOU KNOW, THERE ARE A NUMBER OF OUTSTANDING CONTRACTS FOR LOWER PRICE COTTON BETWEEN AMERICAN SHIPPERS AND OTHER PHILIPPINE MILLS. WE ARE SURE THAT YOU WOULD STRONGLY PROTEST A REFUSAL BY ANY OF THOSE SHIPPERS TO HONOR THEIR CONTRACTS BECAUSE OF NON-PERFORMANCE BY, FOR EXAMPLE, LIRAG, UNITED ASIA, YUPANGCO AND CENTRAL. WE ALSO WOULD REGARD SUCH ACTION AS HIGHLY IMPROPER. YET SUCH ACTION WOULD BE PRECISELY EQUIVALENT TO THE SUGGESTION IN YOUR CABLE THAT THE MILLS WITH OUTSTANDING ANNEX CONTRACTS SOMEHOW CAN RELY ON THE DISPUTE BETWEEN STARKE TAYLOR AND SOLID TO JUSTIFY THEIR CONTINUED DEFAULT.

IN VIEW OF THE FOREGOING, WE WOULD HOPE THAT THE REMAINING LETTERS OF CREDIT WILL BE OPENED PROMPTLY. WE LOOK

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FORWARD TO RECEIVING YOUR COMMENTS AND SEND YOU OUR BEST WISHES FOR THE NEW YEAR. WARM REGARDS. WILLIAM MCBLAIR, JR., VICTOR S. FRIEDMAN, COUNSEL, AMERICAN COTTON EXPORTERS ASSOCIATION. END QUOTE SISCO

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